

1 REMARKS

2 Status of the Claims

3 Claims 34-44 remain pending in the present application, Claim 33 having been canceled
4 herein due to a Restriction Requirement, Claims 1-32 having been previously canceled in response to
5 a Restriction Requirement, and new Claim 44 having been added herein. Claims 34-36 and 42 have
6 been amended to more clearly define the recited subject matter.

7 Claims Rejected Under 35 U.S.C. § 102(e) in view of Vrane

8 Claims 34-36, 38-41, and 43 have been rejected under 35 U.S.C. § 102(e) as being anticipated
9 by U.S. Patent Publication No. 2004/0027914 (Vrane).

10 In the interest of reducing the complexity of the issues for the Examiner to consider in this
11 response, the following discussion focuses on independent Claims 34-36.

12 The patentability of each remaining dependent claim is not necessarily separately addressed in
13 detail. However, applicants' decision not to discuss the differences between the cited art and each
14 dependent claim should not be considered as an admission that applicants concur with the Examiner's
15 conclusion that these dependent claims are not patentable over the disclosure in the cited references.
16 Similarly, applicants' decision not to discuss differences between the prior art and every claim
17 element, or every comment made by the Examiner, should not be considered as an admission that
18 applicants concur with the Examiner's interpretation and assertions regarding those claims. Indeed,
19 applicants believe that all of the dependent claims patentably distinguish over the references cited. In
20 any event, a specific traverse of the rejection of each dependent claim is not required, since
21 dependent claims are patentable for at least the same reasons as the independent claims from which
22 the dependent claims ultimately depend.

23 Patentability of Independent Claim 34 over Vrane

24 Subparagraph (b) of Claim 34 specifically recites that solid body rotation is achieved. Vrane
25 specifically discloses that solid body rotation is prevented (Abstract & paragraph 0013). Given that
26 difference, Vrane cannot anticipate the method of Claim 34. Nor can Vrane be modified to achieve
27 an equivalent method, because that would change the principle of operation of Vrane, contrary to
28 MPEP 2143.01. Accordingly, the rejection of Claim 34 as being anticipated by Vrane should be
29 withdrawn.
30

1 Patentability of Independent Claim 35 over Vrane

2 Subparagraph (b) of Claim 35 specifically recites “particulates in the fluid tracing a
3 substantially circular pathway,” which, as explained in the final paragraph on page 11 of applicants’
4 specification, is another way to refer to solid body rotation. As noted above, Vrane specifically
5 discloses that solid body rotation is prevented, thus Vrane cannot anticipate the method of Claim 35.
6 Accordingly, the rejection of Claim 35 as being anticipated by Vrane should be withdrawn.

7 Patentability of Independent Claims 34, 35, and 36 over Vrane

8 Each of Claims 34, 35 and 36 have been amended to recite that a first prime mover is used to
9 rotate the container, and a second prime mover is used to manipulate a member to displace fluid from
10 the container. As amended, each independent claim distinguishes over Vrane for at least two reasons.

11 First, Vrane discloses using a first prime mover to rotate the container, but not using a second
12 prime mover to dispense the fluid. Second, Vrane discloses dispensing the fluid via aspiration, which
13 is not equivalent to using a member introduced into a container to displace the fluid, as recited in the
14 amended claims. Modifying Vrane’s technique to achieve an equivalent would impermissibly change
15 the principle of operation of Vrane, contrary to MPEP 2143.01.

16 Accordingly, the rejection of Claims 34, 35 and 36 as being anticipated by Vrane should be
17 withdrawn. Because dependent claims include each element recited in the independent claim from
18 which they depend, each claim depending on independent Claim 36 is patentable for at least the same
19 reasons. Accordingly, the rejection of dependent Claims 38-41 and 43 should also be withdrawn.

20 Claims Rejected Under 35 U.S.C. § 102(e) in view of Schlumberger

21 Claims 34-41 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent
22 No. 6,431,745 (Schlumberger).

23 As noted above, in the interest of reducing the complexity of the issues for the Examiner to
24 consider in this response, the following discussion focuses on independent Claims 34-36.

25 Patentability of Independent Claims 34, 35, and 36 over Vrane

26 Each of Claims 34, 35 and 36 have been amended to recite that a first prime mover is used to
27 rotate the container, and a second prime mover is used to manipulate a member to displace fluid from
28 the container. As amended, each independent claim distinguishes over Schlumberger for at least two
29 reasons.

1 First, Schlumberger discloses using a first prime mover to rotate the container, but not using a
2 second prime mover to dispense the fluid. Second, Schlumberger discloses dispensing the fluid via a
3 manually manipulated pipette (element 50, FIGURE 1), which is not equivalent to the displacement
4 recited in the amended claims. Modifying Schlumberger's technique to achieve an equivalent would
5 impermissibly change the principle of operation of Schlumberger, contrary to MPEP 2143.01.

6 Accordingly, the rejection of Claims 34, 35 and 36 as being anticipated by Schlumberger
7 should be withdrawn. Because dependent claims include each element recited in the independent claim
8 from which they depend, each claim depending on independent Claim 36 is patentable for at least the
9 same reasons. Accordingly, the rejection of dependent Claims 37-41 should also be withdrawn.

10 Claims Rejected Under 35 U.S.C. § 103(a)

11 Claim 42 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Vrane in
12 view of U.S. Patent No. 5,355,373 (Salmon).

13 Applicants have already traversed the Examiner's assertion that Salmon teaches or suggests
14 *matching a frequency modulation and phase characteristics of the motor to a rate of rotation of the*
15 *container, thereby reducing a pulsatility induced in the dispensing of the fluid* (see page 11 of the
16 Amendment and Request for Reconsideration dated January 16, 2009). The Examiner has not
17 entered into the record any articulation of why the Examiner believes that Salmon discloses that
18 pulsatility can be reduced by matching motor characteristics to a rate of rotation.

19 Salmon discloses an electric motor whose frequency modulation and phase characteristics
20 appear to be readily adjustable. Salmon clearly indicates that such adjustments enable a stepper
21 motor with an infinite number of steps to be achieved. Salmon teaches controlling frequency
22 modulation and phase characteristics to increase a number of steps that can be achieved, **NOT** that
23 when such characteristics are matched to a rate of rotation the pulsatility induced in a fluid in the
24 container being rotated can be reduced.

25 Salmon controls frequency modulation and phase characteristics for a different purpose.
26 There simply is no evidence that Salmon alone, or in combination with any other prior art, recognizes
27 that pulsatility in a fluid can be reduced when the frequency modulation and phase characteristics of a
28 motor used to rotate a container in which the fluid is disposed are matched to a rate of rotation of the
29 container. The cited art does not teach or suggest this aspect of applicants' claims. Accordingly, the
30 rejection of Claim 42 should be withdrawn.

1 Patentability of New Claim 44

2 New Claim 44 is based on rewriting Claim 42 as presented in the Amendment and Request
3 for Reconsideration dated January 16, 2009 in independent form.

4 As discussed above, applicants respectfully submit that Salmon *DOES NOT* teach or suggest
5 that a pulsatility in a fluid can be reduced when the frequency modulation and phase characteristics of
6 a motor used to rotate a container in which the fluid is disposed are matched to a rate of rotation of
7 the container.

8 The cited art does not teach or suggest using such a technique to reduce pulsatility, and
9 Claim 44 patentably distinguishes over the art.

10 Conclusion

11 In consideration of the amendments to the claims and the Remarks set forth above, it is
12 applicants' position that all claims in the current application are patentable over the art of record.
13 The Examiner is thus requested to pass this case to issue without further delay. In the event that any
14 other issues remain, the Examiner is invited to telephone applicants' attorney at the number listed
15 below.

16 Respectfully submitted,

17
18 /mike king/
19 Michael C. King
20 Registration No. 44,832

21 MCK/RMA:elm
22
23
24
25
26
27
28
29
30